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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JOHN V. FERRIS, et al.,)	Case No. 2:18-CV-00479-CDS-BNW
)	
Plaintiff(s),)	DEFENDANTS WYNN RESORTS, LTD.
)	AND MATTHEW MADDOX'S MOTION
vs.)	TO SEAL
)	
WYNN RESORTS LIMITED, et al.,)	
)	
Defendant(s).)	
)	
)	
)	

NOTICE OF MOTION AND MOTION TO SEAL

Pursuant to Local Rules IA 10-5 and 7.2, and this Court's August 1, 2024 Order denying Plaintiffs' Motion to Seal (*see* ECF 337, 412), Defendants Wynn Resorts, Ltd. and Matthew Maddox (collectively, the "Company Defendants"), by and through counsel, file this Motion to Seal. This Motion is supported by the following Memorandum of Points and Authorities, the Declaration of Austin Norris filed concurrently herewith, the referenced documents and pleadings on file with the Court, and any oral argument the Court may entertain on behalf of the Company Defendants.

DATED: August 26, 2024

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MEMORANDUM OF POINTS AND AUTHORITIES

The Company Defendants respectfully submit this motion to seal pursuant to the Court’s August 1, 2024, Order. ECF 412. The Company Defendants incorporate herein the arguments set out in their December 19, 2024 Joinder and Response to Class Representatives’ Motion for Leave to File Documents Under Seal. ECF 346, 347.

The Company Defendants’ motion should be granted because there are compelling reasons to seal the materials at issue (collectively, the “Confidential Exhibits”). First, some of the Confidential Exhibits contain sensitive, private, and confidential allegations of sexual assault that, if disclosed, would promote public scandal and subject the parties involved therein to possible harassment, public shaming, or both, including settlement agreements, negotiations, and other references to the same allegations. Second, certain of the Confidential Exhibits contain Company Defendants’ confidential and sensitive business information, including information concerning their confidential internal investigation into the allegations underlying this dispute. Third, some Confidential Exhibits are invoices from Company Defendants’ counsel that contain confidential information regarding attorney strategy and work product, and Company Defendants’ legal costs. Finally, the remainder of the Confidential Exhibits comprise transcripts and other investigatory materials generated during the Massachusetts Gaming Commission’s (“MGC”) investigation into the allegations underlying this dispute, which reference the same allegations of sexual assault as described above and should be sealed to protect the credibility and effectiveness of the MGC’s deliberative process and investigation strategies and tactics.

I. BACKGROUND

On December 5, 2023, Plaintiffs filed an Opposition to the Company Defendants’ Motion for Partial Summary Judgment on Alleged February 12, 2018 Corrective Disclosures (ECF 335, the “Opposition”). Plaintiffs filed the Declaration of Murielle J. Steven Walsh (ECF 335-1, “Walsh Decl.”), which attached the Confidential Exhibits that Company Defendants have designated Confidential pursuant to the protective order entered in this case. ECF 192. Pursuant to the November 1, 2021 Protective Order (ECF 192), Plaintiffs moved to seal Exhibits 14–33, 36, and 41–48 to the Walsh Decl., along with related portions of the Opposition because they “contain sensitive, private, and confidential information.” ECF 337 at 3–4.

1 The Company Defendants joined Plaintiffs and requested that the Confidential Exhibits should
 2 remain under seal. ECF 346. The Company Defendants also submitted the Declaration of Austin Norris
 3 (“Norris Decl.”) in support. *See* ECF 347.

4 The Court denied Plaintiffs’ motion to seal, stating that “the existence of a protective order, alone,
 5 does not justify the sealing of records” and “there has been no response from Defendants advancing other
 6 arguments supporting the need to seal this information.” ECF 412 at 1. The Court allowed the Company
 7 Defendants “an opportunity to advance any such arguments” within 30 days. *Id.*

8 **II. LEGAL STANDARD**

9 Generally, a party seeking to keep court records filed with a dispositive motion (e.g., a motion for
 10 summary judgment) under seal must “articulate[] compelling reasons supported by specific factual
 11 findings . . . that outweigh the general history of access and the public policies favoring disclosure, such
 12 as the ‘public interest in understanding the judicial process.’” *Kamakana v. City & Cnty. of Honolulu*, 447
 13 F.3d 1172, 1178–79 (9th Cir. 2006) (internal citations omitted); *see also* ECF 412 at 2–3. The Court must
 14 “conscientiously balance[] the competing interests of the public and the party who seeks to keep certain
 15 judicial records secret” and after “considering these interests, if the court decides to seal certain judicial
 16 records, it must base its decision on a compelling reason and articulate the factual basis for its ruling,
 17 without relying on hypothesis or conjecture.” *Id.* at 1179 (internal citations omitted).

18 Compelling reasons sufficient to warrant sealing include “when such ‘court files might have
 19 become a vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public
 20 scandal, circulate libelous statements, or release trade secrets.” *Id.* (citing *Nixon v. Warner Commc’ns,*
 21 *Inc.*, 435 U.S. 589, 598 (1978)). Whether a party has put forth sufficiently compelling reasons to justify
 22 sealing is “left to the sound discretion of the trial court.” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809
 23 F.3d 1092, 1097 (9th Cir. 2016).

24 **III. ARGUMENT**

25 There are compelling reasons to keep the contents of the Confidential Exhibits under seal. Each of
 26 the Confidential Exhibits contain confidential and sensitive information that, if made public, could be used
 27 to gratify public spite, promote public scandal, and/or release sensitive and proprietary business
 28 information that could harm Company Defendants’ competitive advantage. Courts routinely protect the

1 confidentiality of such information. This is especially true where, as here, the majority of the Confidential
 2 Exhibits are not probative of, or even relevant to, the issues in Company Defendants’ Motion for Partial
 3 Summary Judgment or Plaintiffs’ Opposition. And the Motion to Seal’s requested relief is narrowly
 4 tailored because it is not feasible to redact the confidential and sensitive information, which is pervasive
 5 throughout the Confidential Exhibits. *See Harper v. Nevada Prop. 1, LLC*, 552 F. Supp. 3d 1033, 1041
 6 (D. Nev. 2021) (stating redaction is appropriate to “the extent any confidential information can be easily
 7 redacted while leaving meaningful information available to the public”).

8 **Exhibits 14–25, 29–33, 36, 42, 44, and 46–48:** These exhibits contain sensitive, private, and
 9 confidential allegations of sexual assault that, if disclosed, would promote public scandal and subject the
 10 parties involved therein to possible harassment, public shaming, or both. Norris Decl. ¶¶ 2–13, 17–21, 22,
 11 24, 26, 28–30. When the disclosure of sensitive and confidential material could “result in improper use of
 12 the material for scandalous or libelous purposes,” sealing is justified. *E.E.O.C. v. Erection Co., Inc.*, 900
 13 F.2d 168, 170 (9th Cir. 1990). Compelling reasons to seal are also present where the material, if disclosed,
 14 would “promote public scandal” or “circulate libelous statements.” *Kamakana*, 447 F.3d at 1179. Media
 15 attention surrounding this litigation, and the allegations made herein, is already high. A Google search for
 16 “Wynn sexual assault” generates approximately 3.6 million results, nearly 200 of which are media reports.
 17 Norris Decl. ¶ 31. Disclosure of the specifics of these allegations will exacerbate media attention, promote
 18 scandal, and further disseminate allegations that are disputed in this litigation.

19 **Exhibits 22–25 and 27–29:** These exhibits are confidential settlement agreements and
 20 negotiations, or contain reference to the terms of confidential settlements agreements, which contain
 21 sensitive, private, and confidential allegations of sexual assault in addition to confidential settlement
 22 payments and terms. Norris Decl. ¶¶ 10–13, 15–17. While the “mere fact that the parties’ settlement
 23 agreement may contain a confidentiality provision, without more, does not constitute a compelling reason
 24 to seal the information,” courts also “recognize the general benefits of keeping settlement discussions and
 25 settlements confidential when feasible.” *Harper*, 552 F. Supp. 3d at 1041; *see also United States v. Glens*
 26 *Falls Newspapers, Inc.*, 160 F.3d 853, 856–58 (2d Cir. 1998) (stating there is a “strong public policy
 27 which encourages the settlement of cases through a negotiated compromise,” public disclosure of which
 28 would “result in no settlement discussions and no settlements”); *U.S. E.E.O.C. v. ABM Indus. Inc.*, 2010

1 WL 582049, at *1 (E.D. Cal. Feb. 12, 2010) (stating “the need for confidentiality of settlement
2 negotiations is without dispute”).

3 Publicly disclosing confidential settlement terms and negotiations would frustrate the purpose of
4 entering into confidential settlement agreements in the first place and discourage future efforts to
5 informally resolve litigation. That the settlement agreements and negotiations also contain sensitive and
6 confidential information about allegations of sexual assault, as well as confidential business and financial
7 information, are additional compelling reasons to maintain these exhibits under seal. *See Las Vegas Sands,*
8 *Inc. v. Nat’l Union Fire Ins. Co.*, 2023 WL 6929303, at *2 (D. Nev. Oct. 19, 2023) (maintaining
9 confidential settlement agreement under seal where it “contain[ed] sensitive and confidential financial and
10 business information”).

11 **Exhibits 27–28, 30, 36, 41–43, and 48:** These exhibits contain Company Defendants’ confidential
12 and sensitive business information, including information concerning their confidential internal
13 investigation into the allegations underlying this dispute. Norris Decl. ¶¶ 15–16, 18, 22–25, 30. There is a
14 compelling reason to limit the disclosure of “business information that might harm a litigant’s competitive
15 standing[.]” *Nixon*, 435 U.S. at 598; *see also Ctr. for Auto Safety*, 809 F.3d at 1097 (harm to party’s
16 competitive standing is a “compelling reason” sufficient to seal business information); *Hunt v. Zuffa, LLC*,
17 528 F. Supp. 3d 1180, 1188 (D. Nev. 2021) (finding compelling reasons justified sealing exhibit that
18 “contains confidential business information, public disclosure of which could potentially damage the
19 parties’ competitive standing”). Further, the Company Defendants’ confidential internal investigation
20 processes, and the conclusions reached as a result thereof, are sensitive and proprietary, which is another
21 compelling reason to keep this information under seal.¹ *See Amarin Pharma, Inc. v. W.-Ward Pharms.*
22 *Int’l Ltd.*, 407 F. Supp. 3d 1103, 1118 (D. Nev. 2019) (compelling reason existed to seal business’s
23 “proprietary information”); *Tesla, Inc. v. Tripp*, 487 F. Supp. 3d 953, 975 (D. Nev. 2020) (same).

24 **Exhibits 26 and 27:** These exhibits are invoices from Company Defendants’ counsel that contain
25 confidential information regarding attorney strategy and work product, and Company Defendants’ legal
26 costs. Norris Decl. ¶¶ 14–15. Compelling reasons exist to justify sealing invoices describing the attorney’s

27 ¹ As discussed above, these exhibits also contain confidential and sensitive information concerning
28 allegations of sexual assault.

1 work and corresponding fees. *See Las Vegas Sands, Inc.*, 2023 WL 6929303, at *2 (sealing “legal invoices
2 from counsel . . . that contain sensitive and confidential financial and business information regarding the
3 attorneys’ privileged work product and Plaintiffs’ legal costs incurred”).

4 **Exhibits 14, 15, 17–21, and 31–32:** These exhibits are deposition and interview transcripts and
5 other investigatory materials generated during the Massachusetts Gaming Commission’s (“MGC”) investigation
6 into the allegations underlying this dispute. Norris Decl. ¶¶ 2–3, 5–9, 19–20. In addition to
7 containing sensitive, private, and confidential information concerning allegations of sexual assault as
8 described above, the Court should keep these exhibits under seal to protect the credibility and effectiveness
9 of the MGC’s deliberative process and investigation strategies and tactics. *See In re Granick*, 388 F. Supp.
10 3d 1107, 1121 (N.D. Cal. 2019) (sealing post-investigation warrant materials in part “to protect the
11 significant governmental and individual interests implicated in those materials,” including “concerns for
12 protecting the integrity of investigations and public safety, and individual interests in safety, privacy,
13 reputation and due process”) (citing *United States v. Bus. of Custer Battlefield Museum & Store Located*
14 *at Interstate 90, Exit 514, S. of Billings, Mont.*, 658 F.3d 1188, 1194 (9th Cir. 2011) (holding the public
15 has only a “qualified common law right of access to warrant materials after an investigation has been
16 terminated,” which can be overcome by compelling reasons)).

17 **IV. CONCLUSION**

18 For the foregoing reasons, the Company Defendants respectfully request that their Motion be
19 granted and that this Court enter an Order granting leave to maintain the Confidential Exhibits under seal.
20 Alternatively, the Company Defendants request that the Court grant leave to redact the confidential and
21 sensitive information in the Confidential Exhibits, and request 14 days to submit proposed redactions to
22 the Court.

1 DATED: August 26, 2024

KIRKLAND & ELLIS LLP

2
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CERTIFICATE OF SERVICE

On August 26, 2024, I served the foregoing document on all parties appearing in this case when filing said document through the court's PACER system with automatic e-service on all persons who have registered for e-service on PACER for this case.

/s/ Laura Bay
An employee of KIRKLAND & ELLIS LLP